

State of California

M e m o r a n d u m

Department of Justice

1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

To : Mehdi Morshed, Executive Director
California High Speed Rail Authority
925 L St., Suite 1428
Sacramento, CA 95814

Date: March 30, 2010
Telephone: (916) 324-5343
FACSIMILE: (916) 327-2319
E-mail: Christine.Sproul@doj.ca.gov

From : Christine Sproul
Deputy Attorney General
Land Law Section
Office of the Attorney General – Sacramento

Subject : Outline of Alternatives Analysis Process for HST Environmental Impact Reports

I. BACKGROUND AND LEGAL CONTEXT

A. Two MOUs between CHSRA and FRA for preparing joint environmental documents

- 2001 MOU for Program EIR/EISs; 2007 MOU for HST Project EIR/EISs
- To increase efficiency, reduce duplication, provide coordination
- To provide joint release of documents to comply with both CEQA & NEPA
- FRA as lead agency for NEPA purposes
- CHSRA as lead agency under CEQA and project joint-lead for NEPA
[note CHSRA has dual role]

B. Cooperating Agency Agreement by FRA with US EPA, US Army Corps

- To integrate NEPA and 404 requirements for program environmental documents and for HST project EIR/EIS documents
- Points of concurrence:
 - (1) purpose & need/project objectives statement
 - (2) alternatives for study, and
 - (3) selected alternative likely to contain (program) or contains (project) the least environmentally damaging practicable alternative [LEDPA]
- Additional agencies for some sections: FTA, FHWA, BLM

C. Two Program EIR/EISs for the California High Speed Train System

- 2005 Final Program EIR/EIS for statewide HST system
- 2008 Final Program EIR/EIS for HST from Central Valley to Bay Area*
- CHSRA and FRA decisions to approve HST, select alignments and stations locations for detailed further study in Project EIR/EISs
- Concurrence by Corps and US EPA that selected alignments likely contain LEDPA**

*As a result of litigation, the Authority rescinded its approval of the 2008 Final Program EIR, issued Revised Draft Program EIR materials, and will make a new decision considering the record as a whole after Revised Final Program EIR materials are prepared.

**See attached schematic drawing indicating coordination process with US EPA and US Army Corps of Engineers in HST project EIR/EISs being prepared by Authority and FRA.

II. REQUIREMENTS FOR ALTERNATIVES IN HST PROJECT EIR/EISs

- Determining range of alternatives for HST projects starts with alternatives selected by the CHSRA and FRA based on the Final Program EIR/EISs
- No project alternative – what will happen if proposed project not pursued
- Reasonable range of potentially feasible alternatives to proposed project – i.e., alternatives that will achieve most of basic project objectives/purpose & need and also avoid or lessen significant adverse environmental impacts
- NEPA requires preferred alternative to be identified -- may be in draft EIS, must be in final EIS
- CEQA requires environmentally superior alternative to be identified – if it is “no project,” then must identify a superior alternative among the other alternatives
- The range of alternatives is governed by the “rule of reason” – range established to permit a reasoned choice, foster public participation and informed decision-making; no required number of alternatives or alternative locations

III. PUBLIC NOTICE & PARTICIPATION REQUIREMENTS IN CEQA & NEPA

- Notice of Preparation of EIR (CEQA)/Notice of Intent to Prepare EIS (NEPA)
- Scoping meetings with public agencies and the public
- Issuance of Draft EIR/EIS – deadline for comment indicated; written responses required; comments rec'd after deadline do not require response
- Final EIR presented to Board for action at a noticed Board meeting with public comment opportunity
- Final EIS available to public for 30 days, after which FRA may issue ROD

NOTE: No specific process requirements are specified by CEQA or NEPA for identifying the alternatives to be studied in EIRs and EISs. The Authority's AA process provides public input opportunities beyond those expressly required by CEQA and NEPA.

IV. ALTERNATIVES ANALYSIS PROCESS FOR HST Project EIR/EISs

A. Summary of CHSRA Alternatives Analysis [AA] Process

- Alternatives to be considered include:
 - 1- alternatives selected at the end of the Program EIR/EIS process with concurrence from US EPA and US Army Corps
 - 2- potentially feasible alternatives suggested during scoping
 - 3-potentially feasible alternatives/design variations that meet project objectives and avoid or reduce significant environmental impacts
- Includes public participation components that offer opportunities for public and agency input – e.g., briefings and information meetings, TWGs
- Includes consultation with US EPA and the US Army Corps to seek concurrence on alternatives to study in EIR/EIS
- Draft or Preliminary AA report
- Supplement to or recommended revisions to AA report as a result of feedback
- Public presentations to the CHSRA Board

B. CHSRA Board options for input to and oversight of the AA process

- As frequently as the Board desires, subject to Open Meeting Act notice and agenda requirements, including:
 - Before an AA report is released, initial presentation of identified alternatives
 - Upon or just after release of Preliminary AA report for public comment
 - 30-days or more after the release of the AA report, for staff to recommend changes and Board to provide direction at a noticed public meeting
 - Need clear point when preparation of draft EIR/EIS may proceed
 - Schedule for AA input should take into account schedule for EIR completion and funding considerations [state and federal]
- May be subject to a vote, if desired; but vote not required
 - Context for vote?
 - After time provided for public input
 - Provides guidance for staff to proceed with draft EIR/EIS
 - Alternatives may change after AA process
 - EIR not final until the end of the process (certification and decisions)
 - EIS not final until issued by FRA and ROD issues
 - Caveats for a vote:
 - does not cut off public input
 - does not cut off Board input
 - does not limit Board decisions on the EIR based on whole record
 - does not bind federal agencies

Goal:

CHSRA and FRA have same alternatives for CEQA and NEPA in EIR/EISs, and have concurrence from federal cooperating agencies in alternatives for study